

COPY

IN THE SUPREME COURT OF MISSISSIPPI

ALEX DURODE JOHNSON, III.

Vs.

STATE OF MISSISSIPPI

APPELLANT

CAUSE: 2007-CP-01649

APPELEE

NOTICE OF AMENDED REPLY BRIEF  
CLAIM

FILED

MAY 01 2008

Office of the Clerk  
Supreme Court  
Court of Appeals

Comes Now, Alex Durode Johnson, III, Pro Se, Petitioner who file his/ This Amended Petition for Reply Brief.

STATEMENT OF THE ISSUES

- (I.) Johnson Trial Court Erred In Failing To Inform Johnson's Of His Constitutional Right To Avoid Self-Incrimination.
- (II.) Johnson Trial Court Did Error When Denying Johnson Motion For Post-Conviction Relief As Johnson Plea Was Not Voluntarily Made.

STATEMENT OF THE FACTS

Alex Durode Johnson, III was indicted for possession of cocaine with intent to sell, barter, transfer or deliver the

same to another. (Record page 55). (See generally record page 69 line 29) clearly show on April 4, 2006 Johnson pled guilty to straight possession. (See generally record p. 74 lines 21-29) where the record clearly show the State only recommendation. (See Exhibit "A") where the State did not have Jurisdiction of the January 11, 2005 drug charge to make it apart of the Plea Agreement.

On June 19, 2007 Johnson filed a Motion To Correct the Transcript, in which the lower court failed to file this motion with the other records to the Supreme Court Clerk Office December 14, 2007. see exhibit "B" (See generally record p. 84) where the Order to Denied this motion.

On August 4, 2007 Johnson filed a Notice of Amended Post-Conviction Claim and the lower court did not address that motion.

### Facts Within Petitioner's Personal Knowledge

(A.) That on or about the July term of 2005, petitioner was indicted by the Grand Jury of Washington County for possession of cocaine with intent to sell, barter, transfer or deliver.

(B.) Subsequently, on April 4, 2006 the State allowed Johnson to plea to an "Unindict" charge Straight Possession.

# ARGUMENT

## ISSUE ONE:

The Trial Court Erred In Failing To Inform Johnson Of His Constitutional Right To Avoid Self-Incrimination

*Horton V. State*, 584 So. 2d 764; 1991 Miss [HN3] Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. **First** is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the states by reason of the Fourteenth. **Second** is the right to trial by jury. **Third** is the right to confront one's accusers. A court cannot presume a waiver of these three important federal rights from a Silent Record. [HN4] Unif. Crim R. Cir. Ct. P. Rule 3.03(3) provides in part that when the defendant is arraigned and wishes to plead guilty to the offense charged, it is duty of the trial court to address the Defendant Personally

## ISSUE TWO:

The Trial Court Did Error When Denying Johnson Motion For Post-Conviction Relief As Johnson Plea Was Not Voluntarily Made.

The Record clearly show that this plea was not freely enter (See Record page 74 lines 21-29 and page 75 lines 1-3 and page 76 lines 16-23).

### CONCLUSION

Appellant request that this Court grant his petition and Discharge the Appellant as Law Requires.

Respectfully Submitted,

Alex Durode Johnson, III  
Alex Durode Johnson, III Pro Se  
M.D.C. # 76193  
I.C.C.F. T-Zone  
P.O. Box 220  
Mayersville, MS 38113

## Certificate Of Service

I, Alex Durode Johnson, III Pro Se herein, do hereby certify that I have this day mailed postage full prepaid, a true and correct copy of the foregoing Notice of Amended Reply Brief to the following:

Supreme Court Clerk  
P.O. Box 249  
Jackson, MS 39205

Mr. Jim Hood, Attorney General  
P.O. Box 220  
Jackson, MS 39205

This the 30 day of April, 2008.

Respectfully Submitted,

Alex Durode Johnson, III

Alex Durode Johnson, III

M.D.O.C. # 76193

I.C.C.F. T-Zone

P.O. Box 220

Mayersville, MS 39113

Exhibit ~~B~~ "A"  
Washington County Sheriff's Dept.

Greenville, Miss. 38702-0786

MILTON GASTON, SR., Sheriff



P.O. Box 786  
Phone (662) 334-4523  
Fax (662) 334-2764

January 30, 2008

Alex Durode Johnson, III  
I.C.C.F. #76193 T-Zone  
P.O. Box 220  
Mayersville, Mississippi 39113

Dear Mr. Johnson:

We are in receipt of your letter inquiring about the status of a case. You did not indicate what the charge was but you referenced the date of 1-11-05. We show on that date you were charged with Possession of Cocaine With Intent. We show no grand jury action has ever been taken to date. This was worked by the Washington County Drug Task Force and we have no further information.

Sincerely,

Brenda Stone  
Brenda Stone, Records

Exhibit ~~B~~ "A"

Exhibit "B" "B"

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, MISSISSIPPI

Alex Durode Johnson, III

Vs.

State Of Mississippi

Receive a Notice

October 22, 2007

See page 25 of

Denied

Petitioner

Cause NO. 2005-198

Respondent

Motion To Correct The Transcript

Comes Now, Alex Durode Johnson, III ProSe, and files this motion Pursuant to Miss. R. App. p. 10 and Miss. Code Ann. 9-13-33 (1) TO (4) (Supp. 1986), and in support thereof would show the following:

I.

That petitioner gives direction as to the authenticity of the official transcript which was stenographed by Ms. Vickie T. Cawthon who is an official Court reporter for Washington County, Mississippi.

II.

As to the transcript, on page five (5) the words "The Judge stated that petitioner was too loud and petitioner replied that Johnson was sorry "I,m sorry, your Honor, I,m sorry." This protion was omitted from the transcript that is currently in petitioner,s possession. See page (5) of the Plea Transcript (P. T.) line 8.

III.

As to the transcript, on page (5) after line 21; the words "where Mr. George T. Kelly, Jr. stated; I heard about it, but I don't know anything about it." This portion was omitted from the record that is currently in petitioner's possession. See (P. T.) page 5 after line 21

IV.


As to the transcript item, on page 6 after line 21; the words "where the Judge asked Mr. Kelly was that witness (referring to DeAndre Gaston) present. Mr. Kelly stated, Yes Sir, you Honor." This portion was also omitted from the record that is currently in the petitioner's possession. See (P. T.) hereto.

V.

As to the transcript item, on page 6 after line 21; the Judge asked the State, what they knew about the threat complaint. This portion was omitted from the record that is currently in the petitioner's possession.

VI.

As to the transcript item, on page 6 after line 21; the words "where the Judge asked Mr. Kelly if this goes to trial are he set for it." This portion was omitted from the record that is currently in the petitioner's

  
possession. See (P. T.)

VII.

As to the transcript item, on page 6 after line 21; the words " the State answered; Yes, we called the Sheriff and talked with him about his nephew (DeAndre) being a trouble maker. This statement was a continuation from the line of questioning under paragraph V. This protion was also omitted from the record as evidenced above.

VIII.



As to the transcript item, on page 6 after line 21; the words where Mr. Kelly responded; Yes Sir, you Honor I am set. This statement followed the line of questioning under paragraph VI. This protion was also omitted from the record as evidenced.

IX.

As to the transcript item, on page 5 line 25; the words "where Johnson shook his head No. This statement followed the line of questioning under paragraph III. This protion was also omitted from the record as evidenced.

X.

As to the above protion of the transcript proceedings the petitioner has

 (1) 

~~XXXXXX~~  
personal knowledge of the matters referred to therein in addition to the  
testimony submitted by the parties on April 4, 2006 relating to said items,  
and the foregoing pleading is based on both the Introductory authority and  
Byrd V. F-S Prestress, Inc. 464 So. 2d 63, 69 (Miss. 1985). This rule  
reinstates the express requirement that the appellant designate those parts  
of the record to be included on appeal. This rule will also equally apply  
to any type of Post-Conviction Appeal and research preparations.

XI.

Wherefore, These Premises Considered, Your petitioner Prays that this  
Court would grant unto Johnson a completed and full recordation of the  
omitted portion of the transcript proceedings by directing that the Court  
reporter reproduce such records herein.

Respectfully Submitted,

Alex Duode Johnson, III  
Alex Duode Johnson, III

Petitioner ProSe

on this 19 day of June, 2007

~~XXXXXX~~

(1)

(1)

State Of Mississippi

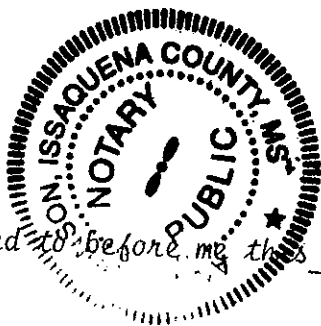
:SS)

County Of Issaquena

Affidavit Of Poverty

Personally appeared before me the undersigned authority and in and for the afore said Jurisdiction, Alex Durode Johnson, III M.D.O.C. #76193 who first being duly sworn, does depose and sayth:

I, Alex Durode Johnson, III do solemnly swear that I am a citizen of the State Of Mississippi and because of my poverty I am not able to pay the same in the suit (Motion to Correct Transcript) which I am about to commence and that, to the best of my knowledge and belief, I am entitled to the relief which I seek by such sort.



Alex Durode Johnson III  
Alex Durode Johnson, III Affiant

Sworn and subscribed to before me this 19 day of June, 2007

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES SEPT. 12, 2009  
BONDED THRU STEGALL NOTARY SERVICE

My Commission Expires:

[Signature]  
Notary Public



Certificate Of Service

This is to Certify that a true and correct copy of the above  
and foregoing Motion to correct the transcript, has been mailed  
Via United State Pre - Paid Postage to the following:

Honorable Ms. Joyce Chiles

District Attorney

P. O. Box 1276

Greenville, MS. 38702

Ms. Janice C. Brown

Circuit Court Clerk  
P. O. Box 1276  
Greenville, MS 38702

This the 19 day of June, 2007

Sincerely,

Alex Durode Johnson III

Alex Durode Johnson, III Pro-Se

M.D.O.C.

#76193

I.C.C.F.

A-Zone

P. O. Box 220

Mayersville, MS 39113

